that the wife can have been held to have consented to in joining with her husband in the mortgage-deed. The applicability or non-applicability of the Statute of Limitations depends on the capacity or non-capacity of the defendant to sue, and not on the existence or non-existence in her of a right of disposal: *Funkhouser* v. *Langhoph*, 26 Mo. 453. But in Connecticut the only provision in regard to the rights of married women to sue or to be sued in their own names relates to the contingency of their carrying on a separate business under their own names; and in actions of ejectment the Connecticut statute allows five years to a person after the removal of disability, in which to bring suit, and this provision may be said to apply equally to a bill in equity to redeem; since equity acts upon the Statutes of Limitations only from analogy and in the case of a mortgage takes the analogy from the ordinary limitation to rights of entry and actions of ejectment: Story's Equity Jurisprudence, §§ 64 a, 1028 a, and in this instance the petitioner seems to have brought her bill within the five years.

L. C. R.

Supreme Court of Illinois.

PULLMAN PALACE CAR CO. *v.* SMITH.

A palace or sleeping-car is not an inn, nor is the company owning it subject to the responsibilities as to traveller's baggage of an innkeeper at common law.

A traveller, who was being transported by a railroad company, to whom he had paid a fare, took a berth in a sleeping-car attached to the train, but belonging to a different company, for which he paid an extra sum to the sleeping-car company. While asleep he was robbed of a large sum of money he carried in his pocket. *Held*, that the sleeping-car company was not liable, either as an innkeeper or as a common carrier.

APPEAL from Cook county.

This was an action brought by Chester M. Smith, appellee, against the Pullman Palace Car Company, appellant, for the recovery of $1180, claimed to have been lost from a Pullman sleeping-car, under the following circumstances:

Appellee, starting from his home in Oconomowoc, Wis., for a point in Missouri, south-west of St. Louis, for the purpose of buying horses and mules, purchased a ticket through to St. Louis, *via* The Milwaukee and St. Paul Railway to Chicago, thence to St. Louis, over the Alton and St. Louis Railway. He arrived at Chicago about eight o'clock in the evening and bought from appellant a sleeping-car ticket from Chicago to East St. Louis, for which he paid the sum of two dollars, and took a berth in the Pullman car, which left Chicago for St. Louis, at nine o'clock P. M. His money, $1180, was in an inside vest pocket, and when he retired for the night, the vest was placed under his pillow; in

the morning he found the vest as he left it, but the money was gone.

On behalf of the Pullman Palace Car Company, it appeared, that they have no place to store valuables, and that their agents are instructed to receive no parcels, valuables or money, and receive no pay for baggage, or valuables of any kind, but only to take pay for the occupancy of the berths; and that they do not receive packages, valuables or money, from passengers on the car, to take charge of; upon the back of their checks, which are given when the tickets are taken up, is printed the following: "Wearing apparel or baggage placed in the car, will be entirely at the owner's risk." They receive into their cars only those who have a first-class passage ticket, or a proper pass from the railroad company; passengers receive their berths for a particular trip, and for a particular berth and car, paying in advance. The company has no interest in the fare paid by the passenger to the railroad company for transportation, and the railroad company has no interest in the prices paid the Pullman Palace Car Company for berths; the latter receive pay for sleeping accommodations, none whatever for transportation.

The court below gave the following instruction to the jury:

"If the jury believe from the evidence, that the plaintiff, while sleeping in the defendant's car, on the trip from Chicago to Alton, was robbed of a sum of money which he then had with him, then the verdict should be in his favor for the sum of which he was so robbed, unless the same was greater than would be an ordinary and reasonable sum for a traveller to carry with him for travelling expenses only, upon such a journey as the plaintiff was then upon, and his return home; in which case he should only recover such ordinary and reasonable sum, to which the jury may, if they think proper, add interest at six per cent. for fourteen months."

The jury returned a verdict for the plaintiff for $277, upon which judgment was rendered, to reverse which the Pullman Palace Car Company bring this appeal.

The opinion of the court was delivered by

SHELDON, J.—The instruction which the court gave to the jury, made the company responsible as insurer for the safety of the money, imposing upon it the severe liability of an innkeeper or common carrier; and it is the position which appellee's counsel

take, that the relation between the parties in this case was that of innkeeper and guest, and that the liability of the company is that of an innkeeper.

In order to ascertain whether the extraordinary responsibility claimed here exists, it becomes important to inquire into the nature of inns and guests, where this liability was imposed by the common law, and see whether the description properly applies here. Kent, in defining an inn, says: "It must be a house, kept open publicly, for the lodging and entertainment of travellers in general, for a reasonable compensation. If a person lets lodgings only, and upon a previous contract, with every person who comes, and does not afford entertainment for the public at large indiscriminately, it is not a common inn:" 2 Kent Com. 595. This is substantially the same definition as is given in all the books upon the subject.

"But the keeper of a mere coffee-house, or private boarding or lodging-house, is not an innkeeper in the sense of the law." 2 Kent Com. 596; *Dansey* v. *Richardson*, 3 Ellis & Bl. 144; *Holder* v. *Soulby*, 8 C. B. N. S. 254; *Kisten* v. *Hildebrand*, 9 B. Monroe 72. It must be a common inn, that is, an inn kept for travellers generally, and not merely for a short season of the year, and for select persons who are lodgers. Story on Bailm., § 475, and cases cited in note. The duty of innkeepers extends chiefly to the entertaining and harboring of travellers, finding them victuals and lodgings, and securing the goods and effects of their guests; and, therefore, if one who keeps a common inn, refuses either to receive a traveller as a guest into his house, or to find him victuals or lodgings, upon his tendering him a reasonable price for the same, he is not only liable to render damages for the injury, in an action on the case, at the suit of the party grieved, but also may be indicted and fined at the suit of the King. 3 Bac. Ab., *Inns and Innkeepers*, C. The custody of the goods of his guest is part and parcel of the innkeeper's contract to feed, lodge and accommodate the guest, for a suitable reward: 2 Kent's Com. 592.

From the authorities already cited, it is manifest that this Pullman Palace Car falls quite short of filling the character of a common inn, and the Pullman Palace Car Company that of an innkeeper.

It does not, like the innkeeper, undertake to accommodate the

boarding public, indiscriminately, with lodging and entertainment. It only undertakes to accommodate a certain class, those who have already paid their fare, and are provided with a first-class ticket entitling them to a ride to a particular place.

It does not undertake to furnish victuals and lodging, but lodging alone, as we understand. There is a dining car attached to the train, as shown, but not owned by the Pullman Company, nor run by them. It belongs to another company—the Chicago and Alton Dining Car Association. Appellant, as we understand, furnishes no accommodation whatever, save the use of the berth and bed, and a place and conveniences for toilet purposes. We would not have it implied, however, that even were these eating accommodations furnished by appellant, it would vary our decision, but the not furnishing entertainment is a lack of one of the features of an inn.

The innkeeper is obliged to receive and care for all the goods and property of the traveller, which he may choose to take with him upon the journey; appellant does not receive pay for, nor undertake to care for any property or goods whatever, and notoriously refused to do so. The custody of the goods of the traveller is not, as in the case of the innkeeper, accessory to the principal contract to feed, lodge and accommodate the guest for a suitable reward, because no such contract is made.

The same necessity does not exist here as in the case of a common inn. At the time when this custom of an innkeeper's liability had origin, wherever the end of the day's journey of the wayfaring traveller brought him, there he was obliged to stop for the night, and intrust his goods and baggage into the custody of the innkeeper. But here the traveller was not compelled to accept the additional comfort of a sleeping-car; he might have remained in the ordinary car, and there were easy methods within his reach by which both money and baggage could be safely transported. On the train which bore him, were a baggage and an express car, and there was no necessity of imposing this duty and liability on appellant.

It cannot be supposed that any such measure of duty or liability attached to appellant, as is declared in the quotation cited from Bacon's Abridgment, to belong to an innkeeper. The accommodation furnished appellee was in accordance with an express contract, entered into when he bought his berth ticket at Chicago,

which was for the use of a specified couch from Chicago to St. Louis, and appellant did not render a service made mandatory by law, as in the case of an innkeeper.

But if it should be deemed, that on principle merely, this company would be required to take as much care of the goods of a lodger, as an innkeeper of those of a guest, the same may be said with reference to the keeper of a boarding-house, or of a lodging-house. In *Dansey* v. *Richardson*, *supra*, where the innkeeper's liability was refused to be extended to a boarding-house keeper, it was said by COLERIDGE, J.: "The liability of the innkeeper, as indeed other incidents to his position, do not, however, stand on mere reason, but on custom, growing out of a state of society no longer existing." In *Holder* v. *Soulby*, *supra*, where it was held the law imposed no duty upon a lodging-house keeper, to take due care of the goods of a lodger, *Calye's case*, 8 Co. Rep. 32, was designated as *fons juris*, upon this subject, where it was expressly resolved, that though an innkeeper is responsible for the safety of the goods of a guest, a lodging-house keeper is not. And in *Parker* v. *Flint*, 12 Mod. 255: "If," says Lord HOLT, "one come to an inn, and make a previous contract for lodging for a set time, and do not eat or drink there, he is no guest, but a lodger, and as such, is not under the innkeeper's protection; but if he eat or drink there, it is otherwise; or if he pay for his diet there, though he do not take it there."

The peculiar liability of the innkeeper is one of great rigor, and should not be extended beyond its proper limits. We are satisfied that there is no precedent, or principle, for the imposition of such a liability upon appellant.

Appellant is not liable as a carrier. It made no contract to carry. Appellee was being carried by the railroad company, and if appellant was a carrier, it would not be liable for the loss in this case, because the money was not delivered into the possession or custody of appellant, which is essential to its liability as carrier: *Towner* v. *The Utica & Schenectady Railroad Company*, 7 Hill 47. In vol. 2, Redf. Am. Railroad Cases 138, it is said: "But it has never been claimed that the passenger carrier is responsible for the acts of pickpockets at their stations, or upon steamboats and railway carriages."

It would be unreasonable to make the company responsible for the loss of money which was never intrusted to its custody at all,

of which it had no information, and which the owner had concealed upon his own person. The exposure to the hazard of liability for losses by collusion for pretended claims of loss where there would be no means of disproof, would make the responsibility claimed a fearful one. Appellee assumed the exclusive custody of his money, adopted his own measures for its safe-keeping, by himself, and, we think, his must be the responsibility of its loss.

We hold the instruction to be erroneous, and the judgment of the court below is reversed, and the cause remanded.

It seems clear that the exceedingly severe liabilities and duties of an innkeeper at common law cannot be imposed upon the owners of palace cars attached to railway trains in this country. There are, it is true, some points of resemblance between an innkeeper and an operator or owner of a sleeping-car, or between a guest at an inn and the occupant of a berth in a sleeping-car; and these resemblances might furnish reasons why some limited liability should be placed upon these companies by the courts, or if that is not possible, in the absence of any general principle of law which can be extended to meet the the case, then by the legislature. Such, for instance, as to hold the companies responsible for any theft or wrongful act of their servants, though done out of the line of the servants' regular employment.

The points of dissimilarity between the two classes of cases are fully and forcibly set forth in the opinion of the court in the principal case, and very properly formed the basis of their decision.

The courts both in England and America have uniformly and positively refused to extend the rule of the liability of an innkeeper beyond the narrow limits which confined it at common law. The Roman law placed a lighter burden upon the keeper of an inn, holding him liable for the loss of the goods of a guest only in case the goods were delivered to the innkeeper, and put under his custody, except in cases where it was proved that the loss was caused by other guests or by the servants of the inn: Pothier, Traité de Dépôt, n. 79; Story on Bailment, § 468.

The legislatures of some of the states have shown the same tendency as the courts in restricting the liabilities of innkeepers, and have brought the law in this respect nearer to the rule of the Roman law. Thus, in Pennsylvania, the Act of 7th May 1855, enacts that whenever an innkeeper provides a secure safe for the safe-keeping of valuables, and gives proper notice thereof, he shall be liable to his guests only for the loss of such amounts of money, and such articles of baggage, &c., as it is usual and prudent for a man to retain in his room or about his person. Similar statutes have been passed in New York and some other states.

It may be of interest to cite some cases, in addition to those referred to in the principal case, to show more fully to what kind of cases the rule of an innkeeper's liability has been extended.

The reason of the rule has been stated by Sir WILLIAM JONES as follows:

"Rigorous as the law in relation to innkeepers may seem, and hard as it may actually be in one or two particular instances, it is founded on the great principle of public utility, to which all private considerations ought to yield; for travellers who must be numerous in a rich and commercial country, are obliged to rely almost implicitly on the

good faith of innholders, whose education and morals are usually none of the best, and who might have frequent opportunities of associating with ruffians and pilferers, while the injured guest could seldom or never obtain legal proof of such combinations, or even of their negligence, if no actual fraud had been committed by them:" Jones on Bailments 95, 96.

In *Manning* v. *Wells*, 9 Humph. 748, the court said: "A passenger or wayfaring man may be an entire stranger. He must put up and lodge at the inn to which his day's journey may bring him. It is therefore important that he should be protected by the most stringent rules of law, enforcing the liability of an innkeeper." See also *Berkshire Woollen Co.* v. *Proctor*, 7 Cush. 417.

In *Cromwell* v. *Stephens*, 2 Daly 15, the court, in a very learned opinion by DALY, P. J., said: "A mere lodging-house, in which no provision is made for supplying lodgers with their meals, wants one of the essential requisites of an inn." And further, that an inn is a house where all who conduct themselves properly, &c., are received, and while there are supplied at reasonable charge with lodging, meals and services.

In *Carpenter* v. *Taylors*, 1 Hilton 193, the court held that a restaurant could not be considered an inn, and said that "on the contrary, as the customs of society change and the modes of living are altered, the law as established under different circumstances must yield and be accommodated to such changes." In another case in the same state, a distinction was drawn between innkeepers and boarding-house keepers: *Wintermute* v. *Clarke*, 5 Sandf. 245.

In *Benner* v. *Wellburn*, 7 Ga. 296, the court went so far as to hold that a public hotel at a watering-place, possessing a medicinal spring and open during the summer and fall for visitors in search of health or pleasure, was of the nature of a boarding-house and not of a tavern or house of entertainment. So a person living at Epsom and lodging strangers for drinking the waters in the season, was held not to be an innkeeper against whom an action would lie for refusing to entertain a guest: 5 Bac. Abr. 228.

In *Lyon* v. *Smith*, 1 Morris 184, the court were of opinion that a person who does not hold himself out as an innkeeper, but entertains travellers occasionally for pay, is not subject to the liabilities of an innkeeper.

The result of all the cases seems to be, as above stated, that the rule will not be carried beyond the narrow limits within which it was originally confined, not even to cover the case of a boarding-house keeper. It would evidently be against all the authorities on the subject to bring the appellants in the principal case within this rule. There seems to be no other ground than the one above discussed, upon which the appellee in this case could recover. In the absence of delivery of the money to the appellant's agent or servant, there could, as the court in the principal case held, be no recovery for the loss. See Story Bailm., § 532, and cases in n. 4.

With regard to the notice which it seems to have been assumed that the appellee had received, that the company appellants would not be responsible for baggage, &c., it is doubtful whether this would of itself, even though brought home to the occupant of a berth, be enough to remove a liability otherwise resting upon the company. It has been held in the case of innkeepers that such notice did not affect the duties and liabilities of the innkeepers: *Johnson* v. *Richardson*, 17 Ills. 302; *Profilet* v. *Hall*, 14 La. Ann. 524. Though an inference to the contrary may be drawn from *Berkshire, &c., Co.* v. *Proctor*, 7 Cush. 417.

F. R.